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Date: 3 Jun 2005**RE:** Application No. 10/662,686 - Phone call of 3 Jun 2005, Ms. Evans**Applicant:** Brian L. Tafel**Filed:** 15 Sept 2003 - First Office Action 24Jan2005 - Response mailed 23 April 2005**Examiner:** Ms. Kathy Matecki (Mr. John M. Jillions,ret) Art Unit 3654

Commissioner for Patents

P.O.Box 1450

Alexandria VA 22313-1450

May 25, 2005 and Jun 25 2005 phone calls from a Ms Evans in the USPTO allege that I had filed my response to Mr. Jillions first Office Action on May 6, 2005 (?), two months late (?).

When I stated that the USPO mailing date stamp on the Certified Mail Receipt 23 Jan 2005, (three months later being Sunday, 24 Apr 2005), and that the certified mail "green card" was date stamped 26Apr2005 , I was told that it was still two months late (?).

I then communicated by fax and on the phone and you said "feel you have a persuasive augment" and you would refer the faxed documents to the appropriate person.

Today again I heard from Ms. Evans who reiterated her previous position and urged me to just send the \$225.

I have then looked up on the UPTO Internet and found U.S.C 21 (a) : "The Director may by rule prescribe that any paper or fee required to be filed in the PTO will be considered filed in the Office on the date which it was deposited with the US Postal Service".

Just in case some part of my response is not "in the specified manner", my document filing date of 23Apr2005 should still be allowed under 35 U.S.C 26 which states that even documents which are not: "executed in a specified manner may be provisionally accepted , by the Director despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed." The "within such time as may be prescribed." clause is clearly moot as there have not yet been any defects detected to date.

Please give this your personal attention, and if I may be of assistance, call me at 847 297 7121.

Brian Tafel

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(2) Attachments

CONSOLIDATED PATENT LAWS

(Amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-565, 581 (S. 1948 secs. 4507(2), 4718).)

CHAPTER 2 — PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

Sec.

- 21 Filing date and day for taking action.
- 22 Printing of papers filed.
- 23 Testimony in Patent and Trademark Office cases.
- 24 Subpoenas, witnesses.
- 25 Declaration in lieu of oath.
- 26 Effect of defective execution.

35 U.S.C. 21 Filing date and day for taking action.

(a) The Director may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Director.

(b) When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day.

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Aug. 27, 1982, Public Law 97-247, sec. 12, 96 Stat. 321; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

35 U.S.C. 22 Printing of papers filed.

The Director may require papers filed in the Patent and Trademark Office to be printed, typewritten, or on an electronic medium.

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949, Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582, 589 (S. 1948 secs. 4732(a)(10)(A), 4804(a))).

35 U.S.C. 23 Testimony in Patent and Trademark Office cases.

The Director may establish rules for taking affidavits and depositions required in cases in the Patent

and Trademark Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions.

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A))).

35 U.S.C. 24 Subpoenas, witnesses.

The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent and Trademark Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent and Trademark Office.

Every witness subpoenaed and in attendance shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness, served with such subpoena, neglected or refused to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

(Amended Jan. 2, 1975, Public Law 93-596 sec. 1, 88 Stat. 1949.)

35 U.S.C. 25 Declaration in lieu of oath.

(a) The Director may by rule prescribe that any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration in such form as the Director may prescribe, such declaration to be in lieu of the oath otherwise required.

CONSOLIDATED PATENT LAWS

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(b) Whenever such written declaration is used, the document must warn the declarant that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001).

(Added Mar. 26, 1964, Public Law 88-292, sec. 1, 78 Stat. 171; amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A))).

35 U.S.C. 26 Effect of defective execution.

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be executed in a specified manner may be provisionally accepted by the Director despite a defective execution, provided a properly executed document is submitted within such time as may be prescribed.

(Added Mar. 26, 1964, Public Law 88-292, sec. 1, 78 Stat. 171; amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A))).

CHAPTER 3 — PRACTICE BEFORE PATENT AND TRADEMARK OFFICE

Sec.

- 31 [Repealed]
- 32 Suspension or exclusion from practice.
- 33 Unauthorized representation as practitioner.

35 U.S.C. 31 [Repealed].

(Repealed Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-580 (S. 1948 sec. 4715(b))).

35 U.S.C. 32 Suspension or exclusion from practice.

The Director may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D) of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant, or other person having immediate or prospective business before the Office. The reasons

for any such suspension or exclusion shall be duly recorded. The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Director upon the petition of the person so refused recognition or so suspended or excluded.

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-580, 581, 582 (S. 1948 sec. 4715(c), 4719, 4732(a)(10)(A))).

35 U.S.C. 33 Unauthorized representation as practitioner.

Whoever, not being recognized to practice before the Patent and Trademark Office, holds himself out or permits himself to be held out as so recognized, or as being qualified to prepare or prosecute applications for patent, shall be fined not more than \$1,000 for each offense.

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949.)

CHAPTER 4 — PATENT FEES; FUNDING; SEARCH SYSTEMS

Sec.

- 41 Patent fees; patent and trademark search systems.
- 42 Patent and Trademark Office funding.

35 U.S.C. 41 Patent fees; patent and trademark search systems.

*Editor's Note: During fiscal years 2005 and 2006, subsections (a) and (b) of section 41 of title 35, United States Code, shall be administered as though subsections (a) and (b) read as follows:

(a) GENERAL FEES. — The Director shall charge the following fees:

(1) FILING AND BASIC NATIONAL FEES. —

(A) On filing each application for an original patent, except for design, plant, or provisional applications, \$300.

(B) On filing each application for an original design patent, \$200.

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Apr. 2005